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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 REY DAVIS BELL,

9 Plaintiff,

v.

10 JODY BECKER-GREEN,

11 Defendant.

CASE NO. C17-5319 BHS-TLF

ORDER ADOPTING REPORT
AND RECOMMENDATION

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13 This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. 53), and Plaintiff’s objections to the R&R (Dkt. #58).

16 The factual background of this case is set out in detail in the R&R. *See* Dkt. 53 at 17 1–2. On May 24, 2017, Plaintiff filed his complaint and simultaneously requested an 18 emergency temporary restraining order. Dkts. 8–11. On July 25, 2017, Defendants 19 responded. Dkt. 25. On August 3, 2017, Plaintiff replied. Dkt. 28.

20 On October 11, 2017, Judge Fricke issued the R&R. Dkt. 53. The R&R 21 recommends that the Court deny Plaintiff’s motion for a temporary restraining order. *Id.* 22 However, the R&R makes this recommendation subject to a determination by the Court

1 whether a hearing on the motion with or without an expedited trial on the merits is
2 warranted. Dkt. 53 at 9. On October 20, 2017, Plaintiff objected to the R&R. Dkt. 58

3 The district judge must determine de novo any part of the magistrate judge's
4 disposition that has been properly objected to. The district judge may accept, reject, or
5 modify the recommended disposition; receive further evidence; or return the matter to the
6 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

7 Plaintiff objects to the R&R to the extent that it concludes that the alleged
8 violation of his first amendment rights does not constitute irreparable harm. Dkt. 58 at 2;
9 *see also* Dkt. 53 at 4. To support his position, Plaintiff argues that a possible
10 constitutional deprivation of a constitutional right constitutes irreparable harm for
11 purposes of a preliminary injunction. Dkt. 58 at 1 (citing *Jolly v. Coughlin*, 76 F.3d 468,
12 482 (2d Cir. 1996) (“[I]t is the alleged violation of a constitutional right that triggers a
13 finding of irreparable harm.”)).

14 While plaintiff is correct that a showing of a substantial likelihood of a
15 constitutional violation generally constitutes irreparable harm, “a preliminary injunction
16 is an extraordinary and drastic remedy, one that should not be granted unless the movant,
17 *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S.
18 968, 972 (1997) (emphasis in original; quotation omitted). This suggests that, when a
19 plaintiff seeking a preliminary injunction order makes an argument that relies on the
20 alleged constitutional deprivation itself to show irreparable injury, the likelihood of
21 success element of the applicable standard must establish by a clear showing that the
22 Plaintiff is suffering or will imminently suffer a constitutional deprivation.

1 In this case, the Court is not convinced that Plaintiff has, at this stage, made a clear
2 showing that Defendants are violating his constitutional rights. Accordingly, while the
3 R&R has correctly assessed that Plaintiff has shown some likelihood of success on the
4 merits, *see* Dkt. 53 at 5–9, that likelihood of success and the extent of his alleged right to
5 use a religious name is not at this stage so clearly shown and defined as to warrant
6 preliminary injunctive relief. This is particularly so where the requested injunctive relief
7 would upend, rather than preserve, the status quo in the administration of identification
8 procedures at the prison where Plaintiff is committed. Accordingly, the Court adopts the
9 R&R, denies Plaintiff’s motion for a temporary restraining order and preliminary
10 injunction and remands to Judge Fricke for further proceedings including determinations
11 on the pending discovery motions and a recommendation on Plaintiff’s pending motions
12 to appoint counsel and for summary judgment.

13 Additionally, the Court notes that the parties have filed a stipulated motion to
14 continue the pending motion for summary judgment in light of their discussions to
15 resolve Plaintiff’s claims out of court. By adopting the R&R and remanding for further
16 proceedings, the Court has not rendered any opinion nor taken any steps that will alter the
17 parties’ respective bargaining positions. While the Court declines the suggestion that it
18 could order a hearing on the motion for preliminary injunction and consolidate that
19 hearing with a trial on the merits, it should be observed that a summary judgment motion
20 has already been filed and such a motion, if not resolved in settlement discussions, may
21 be considered by Judge Fricke in connection with an evidentiary hearing if she deems it
22 appropriate or necessary. *See* 28 U.S.C. 636(b)(1)(B). Accordingly, the parties’

1 respective positions and the procedural standing of the case remains unchanged for all
2 practical purposes.

3 The Court having considered the R&R, Plaintiff's objections, and the remaining
4 record, does hereby find and order as follows:

5 (1) The R&R is **ADOPTED**;

6 (2) Plaintiff's motion is **DENIED**; and

7 (2) This action is **REMANDED** to the Honorable Theresa L. Fricke, United
8 States Magistrate Judge, for further proceedings.

9 Dated this 18th day of December, 2017.

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12 BENJAMIN H. SETTLE
13 United States District Judge
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